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THE *Rush-Light.*

Hazard v. 62

31st MARCH, 1800.

BEING THE FOURTH NUMBER OF VOLUME I.

A PEEP INTO A PENNSYLVANIAN COURT OF JUSTICE.

"An Englishman loves *Liberty*, but he loves it not for "the sake of the mere name; he must have something sub- "stantial that results from it; something that he can see and "feel: this he has in the freedom of his person, and the "security of his property. An Englishman, therefore, "thinks more of his *civil* than his *political* Liberty."

REEVES'S THOUGHTS, &c. LET. I.

IN the preceding Numbers of the Rush-Light, I have given a sketch of the parentage, and of the moral and literary character of Rush; I have detailed the insolent absurdities of his general conduct, and the frightful consequences of his system of depletion; and, I have, I trust, most satisfactorily justified the words, for the publication of which the oppressive and unprecedent judg-

ment was given against me, in the city of Philadelphia. Here, then, I should stop, were my design confined to a defence of my own character and to the blasting of that of my persecutors. But, as I observed in the introduction to the subject, my views extend to far greater utility; and, therefore, though the injustice towards myself is already universally acknowledged; though it has excited the indignation of every honest man; though it has roused into action, in my favour, every latent sentiment of friendship, and has, with respect to me, in a great measure, extinguished the ardent embers of political hatred; though every wish, of a private nature, is gratified even to satiety, still the publick and the world have, on me, a claim, which it would be a dereliction of duty to resist.

The Narrative of the Juridical proceedings, in the cause of Rush, furnishes, as I observed before, a series of facts, of which, justice to the people of America, justice to foreign nations, and particularly to the deceived and infatuated in my native country, demand an ample exposure. This subject is of some importance to every man who has the slightest notion of *real* liberty, or the least desire to secure its enjoyment. The character and conduct of Rush, the fatal effects of his medical practice, and the decision against me, are, in different degrees, all matters of private or local consideration; but the proceedings of courts of justice, as they stamp the character of a State, and form the truest criterion of its government,

vernment, are, in some measure, interesting to all persons, and in all places. *Political liberty* is a matter of speculation rather than of interest: it is an imaginary something of meaning undefined, and is, at best, a very distant, if not a very questionable, good. But, *civil liberty*, which is, perhaps, better expressed by the single word *justice*, is clearly defined and understood, and is ardently beloved by us all: it brings us into contact with the government, the excellence of which it makes us feel: it comes to our homes and our fire-sides; it throws a rampart round our property and a shield before our persons; it is our guide and our help through the day, and our guardian when we lie down to sleep. This is the liberty of which our forefathers were so proud: this is the liberty which their blood so often flowed to preserve to their children.——What degree of *this* liberty is enjoyed in Pennsylvania the following narrative will evince.

THE malicious suit of Rush against me was brought in the *Supreme Court of the State of Pennsylvania*, and my first object was, to remove the suit from that court to the circuit of the *United States*, a removal which my being an *alien* gave me a right to demand, but which was, by the Judges of the Supreme Court of Pennsylvania, absolutely refused.

THE nature of the courts, of which I have spoken, and the extent of their jurisdiction, are understood by some few persons in America; but,

but, as I hope the Rush-light will be read in Great Britain and Ireland, some little explanation respecting these courts appears to me to be necessary.

THE several States composing those dominions, which are known to foreign nations by the title of *The United States of America*, are, so many distinct and independent Sovereignties, and not, as is generally imagined in Great Britain, so many counties or provinces. The State of Pennsylvania, for instance, has its own Governor, who is the chief executive magistrate, and whose authority is, in many respects, less limited than that of the King of Great Britain. It has, besides, its two houses of Legislators, who, with the Governor, make laws for the government of the State, and who are uncontrouled by any other power whatever. In like manner it has its own Judges, who are appointed by the Governor, but without the advice or consent of a privy or other council, and without the instrumentality of any ministers on whom responsibility will attach.

IN some of the other States, the power of the Governors is more limited; in that of New York for instance, there is a Council of Appointment; but every State is totally independent of all the others, and, as far as relates to its civil jurisdiction, it is also independent of the government of the United States. In some cases, however, the judiciary of this latter has, in all the States, what

is called a *concurrent* jurisdiction; which concurrent jurisdiction is expressly provided for, in cases where an *alien* is a party.

THE constitution of the United States is very clear on this head. It says, in Sect. II. "The "judicial power of the United States shall extend "*to all controversies between a State*, or *citizens* "*thereof, and foreign States, citizens, or sub-* "*jects.*"

IN order to obviate misconstruction, and more fully to provide for the due observance of this part of the constitution, so necessary to the security of the property of aliens, the Congress of the United States, amongst the first of its proceedings under the present Constitution, passed a law, which says: "And be it further enacted,* that, "if a suit be commenced in any State-Court "against an *alien*, and the matter in dispute ex- "ceeds the aforesaid sum of five hundred dollars, "exclusive of costs, to be made appear to the "satisfaction of the court; and the defendant "shall, at the time of entering his appearance "in the said State-Court, file a petition for the "removal of the cause for trial into the next cir- "cuit court of the United States, to be held in "the district where the suit is pending, and shall "offer good and sufficient surety for his entering in

* THIS law was passed on the 24th of September, 1789. See the Laws of the United States, Vol. I. p. 56.

" in such court, on the first day of its session,
" copies of said proceedings against him, and al-
" so for his there appearing and entering special
" bail in the cause, if special bail was originally
" requisite therein, it shall then be the *duty* of
" the State-Court to accept the surety, and *pro-*
" *ceed no further in the case.*"

SUCH is the provision, which the constitution and the laws of the United States have made for the security of the property of aliens; and, whoever knows any thing of America; whoever is in the least acquainted with the national partialities and antipathies, which mark the words and the conduct of but too many of the rulers of the individual States, must, at once, perceive, that such provision is absolutely necessary. In Pennsylvania, for instance, it was notorious, that all the influential officers of the government, executive and judiciary, bore an implacable hatred against Great Britain and all her *loyal* subjects; and, though a *jury* stood between these rulers and the British subject, yet it was equally notorious, that that jury must be chosen by a man, who held his lucrative office *during the pleasure* of the rancorous Governor.

IN such a state of things, what justice had a Briton to expect in the courts of Pennsylvania? —Besides, there is an absolute absurdity in his being compelled to plead in those courts; for, who ought to administer justice to an alien, but that government who makes treaties, and who

who maintains all the national intercourse, with the sovereign of that alien? What does His Britannick Majesty, or what do his subjects, know of the government, or of the courts, of Pennsylvania? They may hear of them, indeed, and they may stare at their transactions; but that is all. When a British subject contemplates on a residence, or on placing his property, in the United States, he looks up for security to the government of those United States; and, in order to estimate the security, where should he look but into the constitution and the laws, on which alone that security depends?

But, if British subjects in general were insecure in the courts of Pennsylvania, how much more insecure was I, against whom it was well known, that not only the Governor, his Secretary of State, and Attorney-General, but even the Chief Justice, who was to preside at the trial, had a personal and mortal grudge? I, therefore, resolved on removing the cause, notwithstanding the repeated remonstrances of my lawyers, who made use of every argument that could be thought of to persuade me to abandon my intention. They were fully of opinion, that there was no danger in the Supreme Court of Pennsylvania, and that declaring myself, in open court, a subject of the King of Great Britain, would be tantamount to a declaration that monarchy was preferable to republicanism, and would, of course, not only be very offensive to the court, before whom such declaration was made, but would inevetibly tend

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tend to render me odious in the eyes of the people of Pennsylvania, and to weaken the force of all my future publications.

My lawyers were Mr. Thomas and Mr. Edward Tilghman. When this advice was given, I had every reason to suspect the former of the basest treachery; but, in the fidelity of the latter I had then, as I still have, the most implicit confidence. The reasons, however, on which the advice was grounded, were far from being satisfactory to me. Declaring myself the subject of my Sovereign was no more than the formal assertion of a truth that did me great honour; it was saying nothing for, or against, either monarchy or republicanism; and, as to its giving *offence* to the court, or to the people of America, the idea appeared to me perfectly absurd. What! said I, you enter into a solemn treaty with my king, in which treaty you recognize my right, as a British subject, to come and live and carry on trade amongst you, in return for which recognition you receive an equivalent; and, you have, after this, the assurance to tell me, that I must forbear to plead my title of British subject, forego the protection it offers me, and passively submit to injustice and ruin, lest the court and the people of Pennsylvania should be *offended!* What, added I, would you say, were such advice as this given to an American, living in the British dominions? What would you say, were he told, that, to disown and forswear his country were the only means of avoiding legal injustice and publick odium?

odium? And what, in the name of God! What pretensions has an American to superiority over a Briton! Is his country more dear to him than mine is to me? Are his fellow-citizens more honest and more generous than my fellow-subjects; are they more famous for learning and for noble deeds? Are his rulers more powerful, more wise, more magnanimous, or more just, than my sovereign, who, though his fleets command the ocean, though he is the arbiter of nations and the acknowledged saviour of the civilized world, makes his chief glory consist in being the defender, the friend, the father, of his people?

In vain was I told, that my plea was without precedent; and that it had been made by no British subject, since the revolution. If this were the case, I thought it was high time that it should be made, and that we should cease to accept of safety and respect on such degrading conditions. Accordingly, at the first meeting of the Supreme Court of Pennsylvania I presented, in compliance with the law above quoted, the following petition, which I now copy from the record.

Benjamin Rush
v.
William Cobbett.
} Supreme Court of Pennsylvania, Case December Term, No. 3.

To the Honourable the Supreme Court of Pennsylvania.

The Petition of William Cobbett the Defendant in the above action, an Alien and a subject of the King of Great Britain, humbly sheweth,

THAT he issued in the action above mentioned, in which the matter in di pute exceeds the sum or value of five hundred dollars, exclusive of costs; that he is desirous to remove the said cause for trial into the next Circuit-Court of the United States, to be holden for the District of Pennsylvania, and hath good and sufficient security, ready here in court, to engage for his entering in said Circuit-Court, on the first day of its session, a copy of the process in the said action agreeably to the Act, entitled, "*An Act to establish the "Judicial Courts of the United States,*" and also for his appearing in the said Circuit-Court; He therefore prays the Honourable the Court, that security may be taken for the purpose aforesaid, and that the said cause may be removed to the said Circuit-Court of the United States accordingly.

Philadelphia,
30th Dec. 1797. } WILLIAM COBBETT.

WILLIAM COBBETT, being duly sworn, saith that the facts within stated are true.

30th Decr. 1797. WILLIAM COBBETT.

THE consideration of this petition was put off to the next session, which was held in March, 1798. But, before I proceed to relate the fate of it, I cannot help remarking on the sensations, which its presentation produced in the court and the auditory. It was towards the evening of the last day of the session, when Mr. Thomas, albeit unused to the modest mood, stole up gently from his seat, and, in a faint and trembling voice, told the Bashaw, M'c Kean, that he had a petition to present in behalf of William Cobbett. For some time he did not make himself heard. There was a great talking all round the bar; Levi, the lawyer, was reading a long formal paper to the Judges, and the Judges were laughing over the chit-chat of the day. Amidst the noisy mirth that surrounded

ed him there stood poor Thomas, with his papers in his hands, like a culprit at school, just as the boys are breaking up. By-and-by, one of those pauses, which frequently occur in even the most numerous and vociferous assemblies, encouraged him to make a fresh attempt. " I present," says he, " may it please your honours, a petition " in behalf of William Cobbett." The moment the sound of the word *Cobbett* struck the ear of M'c Kean he turned towards the bar, and, having learnt the subject of the petition, began to storm like a madman. A dead silence ensued. The little scrubby lawyers (with whom the courts of Pennsylvania are continually crowded) crouched down for fear, just like a brood of poultry, when the kite is preparing to pounce in amongst them, whilst hapless Thomas, who stood up piping like a straggle chicken, seemed already to feel the talons of the judicial bird of prey. He proceeded, however, to read the petition, which, being very short, was got through with little interruption. When he came to the words, " *subject of His* " *Britannick Majesty*," M'c Kean did, indeed, grin most horribly, and I could very distinctly hear, " *insolent scoundrel !*"—" *damned aristo-* " *crat !*"—" *damned Englishman !*" &c. &c. from the mouths of sovereign people. But, neither these execrations, nor the savage looks that accompanied them, prevented me from fulfilling my purpose. I went up to the clerk of the court, took the book in my hand, and, holding it up that it might be visible in all parts of the hall, I swore, in a voice that every one might hear, that

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I preserved my allegiance to my King; after which I put on my hat and walked out of court, followed by the admiration of the few and by the curses of the many.

THE consideration of the petition was, as I before observed, postponed till March term; which gave kite M'c Kean time to ruminate on the novel adventure. On the one hand, was a violation of the constitution and laws of the General Government; on the other, the escape of his prey. "Of two evils," says the proverb, "choose "the least;" and kite M'c Kean chose, on this occasion, just as any other kite would have chosen. When the court met, he did, indeed, listen, for about an hour, to a sort of contention, which Thomas and Hopkinson called *law-argument*, and which was full as edifying, though not quite so entertaining, as the disputes, with which I had frequently been delighted, between Punchinello and the Devil. While the lawyers were *arguing*, the judges were engaged in a conversation, which, from the marks of risibility apparent on their countenances, seemed to be much more diverting than the contest between the pupets of the bar; when, therefore, this pleasant conversation was over, M'c Kean turned his head towards Hopkinson, and bawled out: "*ha'nt you most done!*" This put an end to the *law-argument*, in a moment. No show-man, with the help of his wire, ever produced more ready or more implicit obedience; and kite M'c Kean now hastened to put an end to the farce, by declaring, without the least hesitation,

tation, without consulting his associates, and without giving any reason whatever for his decision, *that the petition of William Cobbett should not be granted.* *

SUCH is the manner, in which *written* constitutions are observed! That indefatigable constitution grinder, Tom Paine, told his silly partizans in England, that they had *no constitution at all;* and this he represented as a most insupportable grievance. " Now," says he, " in America it is

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* READ THIS NOTE!—As I was going into the court-house to hear this decision, I met *Mr. Coale,* a young man who lived and studied with Hopkinson, the lawyer of Rush. After the usual interchange of civilities, the following dialogue ensued, the correctness of which I am ready to vouch for upon oath.

Coale.—What are you doing here? You are going to remove your cause, are you not?
Cobbett.—Yes.
Coale.—Then you w'ont succeed.
Cobbett.—Why? How do you know I sha'n't?
Coale.—Why, *the court are against you,* I can tell you that.
Cobbett.—What! have they decided, then, before they have heard the parties? They surely cannot be such barefaced rascals?
Coale.—Well! you'll see.

And, sure enough, I did see, in a very little time.—Now, let the reader observe, that this Mr. Coale was in all the secrets of the lawyer of Rush; let him compare Coale's prediction with the decision of the court, and with the manner in which that decision was given; and then I leave him to form his own judgement of the motives from which the petition was rejected.

" is not so. If you ask an American citizen " whether a certain procedure be constitutional, " or not, he takes down the book from the shelf, " opens it, turns to the article that treats of the " subject in question, and gives you an answer in " a moment."—Very true, Thomas, so you see, I took down my copy of the constitution and of the constitutional law; I turned to the article and the section that treated of the subject in question, and I prayed the judges to grant me my petition accordingly; but the judges laughed at me and the constitution too!

But, says the reader, is there no redress in such cases?—None at all.—The constitution, which has made, with aliens, this solemn covenant for the security of their property, has made no provision for carrying it into effect, in opposition to the will of such men as M'c Kean. Indeed, there seems to be an intentional omission here. The Federal Government promises protection to every alien; but, in case he should be oppressed by the State-Governments, it takes care, *by omitting to provide for redress*, to shift all responsibility from itself. Had I petitioned the Chief Justice of the United States to quash the proceedings against me, he would have replied (if, indeed, he had given me any answer at all), that he had no controul over the courts of Pennsylvania, any more than over the courts of King's Bench in England; and, were I now to petition the President, to show him how I have been injured by a violation of the constitution, and to beseech him

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to give me redress, his reply would be similar to that of the Chief Justice; he would tell me that the government of Pennsylvania is a government totally independent of him, and that he can, in no way, undo what it, or its judiciary, does. This is but too true; but does this diminish my loss? Does it do away the oppression? If the Federal Government has not the *power* to protect an alien, it should not *promise him protection*. The Government has, by its constitution and laws, proclaimed to foreign nations, that the property of aliens is under the safe-guard of its courts; and, when these aliens are harrassed and ruined by the unjust and tyrannical proceedings of the State-Governments, shall the Federal Government get rid of its responsibility by pleading its want of power? The government of the United States has stipulated with my sovereign, that his subjects (and I amongst the rest) shall have a right to live and carry on business here, being subject to the laws of the country, which laws provide that I shall have a right to remove my cause into the Federal courts. And shall this government now say, that it is not responsible for my having been deprived of this right? If this be the case, neither would it have been responsible for the conduct of the governor of Pennsylvania, had he banished me from the State. To *stipulate* always implies the power to *fulfil*; any other idea of stipulation is absurd; and, if the power to fulfil does not exist, to stipulate is to delude.

The vindictive judge of Pennsylvania having thus

thus determined not to let go his grasp, I was compelled to submit to his jurisdiction, with very little hope of escaping a ruinous decision. I did, however, take every precaution that was in my power; I employed Messrs. Edward Tilghman and Wm. Rawle as my counsellors, and to them I afterwards added Mr. Harper, a man on whose talents and whose spirit I placed a perfect reliance. The necessary steps were also taken to insure a special jury, who, it was thought by my lawyers and my friends, would be a sufficient protection against the intrigues of the plaintiff and the tyranny of the court.

At the next term, Sept. 1798, I was served with a jury list, which I struck; but the trial was put off. I was served with another jury list at Dec. term, 1798; with another at March term, 1799; with another at September term, 1799; and, at every term, though the juries were always struck by me, and though I was always ready, the trial was put off. At last, on the 13th of December, 1799, it was resolved to bring it to issue. The moment I saw the *jury-list*, "ah!" said I, to a friend that happened to be with me, "the action of Rush is to be tried this time." We looked over the list again and again, and, after the most mature consideration, we could find but 7 men, out of the 48, whom we thought fit to be trusted on the trial; but as I had the power of rejecting no more than 12, there were left, of course, 29 whom I disapproved of, to the 7 whom I approved

proved of; and, as every one of these 7 were struck off by Rush, there remained not a single man on the jury, in whose integrity I had the slightest confidence.

BUT, there were other circumstances highly advantageous to my adversary. M'c Kean, the kite-like Chief Justice, who is better known in England under the title of the *Democratick Judge*, was now become *Governor* of the State, and had, by the early exercise of his power, struck terror into all officers under his controul. *Shippen* was the senior justice on the bench of the supreme court, and he was in eager expectation of succeeding to the post of Chief-Justice; but, M'c Kean kept him in suspence, in a sort of state of probation, *'till the action of Rush against me should be decided!!!*

SINGULARLY favourable, however, as these circumstances were, there was another, still more favourable, wanted, to encourage the American Sangrado to push the cause on to trial: which was, *my absence from Philadelphia*. I had, several months before, publickly signified my resolution to quit Pennsylvania, if M'c Kean should be elected Governor of the State; and every one knew I should be as good as my word. Indeed, it was known, that my books, furniture, &c. &c. were already sent off to New-York; but I remained in the neighbourhood of the city, (where I was seen every day) in order to be present at the trial, if it should come on. On the 7th of

December there was no prospect of the cause being brought to trial; on the 8th, therefore, I came off for New-York, where my affairs required my presence. On the 11th, my correspondent wrote me, that the cause was put off to another court; but, the *very next day*, it was, all at once, resolved to bring it to trial immediately. This sudden change was produced by an advertisement of mine, signifying *my arrival at New-York and my resolution to drop the publication of Porcupine's Gazette.* Sure, therefore, of all the advantages to be derived from my absence, and relieved from all apprehensions on the score of my future writings, the dastardly wretches at last ventured on the execution of their long-meditated revenge! *

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* I HAVE before observed, that Thomas, my lawyer, was *bribed.* I have the most satisfactory proof of this, and I will, in my *Biography of the Pennsylvanian Bar*, which shall appear in a future Number of the Rush-Light, give a full account of the matter.

HOPKINSON, the principle tool of Rush, went to Mr. Fenno's father in the Summer of 1798, and advised him to prevail on his son, the present Mr. John Ward Fenno, to compromise with Doctor Rush. "As to Cobbett," said he, "*he is to be ruined.*" Mr. Fenno scorned the conditions.

MR. Edward Tilghman told me, that the very judges who sat on this trial, had declared their resolution of "*pinching*" the *first* slanderer who should come into their clutches. And, observe, that they said this *long after* the action was brought against me, and also long *after they knew* that *I was the first* upon the docquet for slander: so that, their

In what manner the cause was conducted, on the part of Rush's lawyers, has already been partially noticed. The evidence has also been examined and *exposed:* it, therefore, only remains for me to insert, and to make a few comments on, the charge of Judge Shippen.

Gentlemen,

THIS is an action brought by the Plaintiff against the Defendant for writing, printing and publishing divers scandalous libels, to defame and villify him. The defendant has pleaded that he is not guilty;—his counsel, however have acknowledged the publication of the papers, which, otherwise, it would have been incumbent on the plaintiff to prove. The question, therefore, will be, whether they amount in law to defamatory libels or not?

By the law and practice in England, in the case of libels, the only task of the jury is, to judge of the fact of publication, and the truth and fair application of the inuendos. The court, as judges of the law, reserving to themselves the sole power of deciding whether the paper amounts to a libel or not: But in this state, by the special directions of our constitution, the jury possess the power of judging both of the law and fact, under the direction of the court.

A libel is defined by the law, to be the malicious defamation, expressed either in printing or writing, or by signs or pictures,

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their previous declaration appears clearly to have been thrown out, in order to give the colour of *impartiality* to the decision, which they meditated *against me.*—Let me not be accused of making an improper use of the information given me by Mr. Tilghman; he did not tell it me as a communication made to him in confidence; he did not give it me as a secret; and, indeed, it was *publickly spoken of* in the city, and was intended to be spoken of, for the purpose before mentioned.

pictures, tending to blacken either the memory of one who is dead, or the reputation of one who is alive, or to expose him to public hatred, contempt or ridicule. This offence may be punished, either by indictment at the suit of the commonwealth, or by a civil action at the suit of the party injured. When the prosecution is by indictment, the court only are to direct the punishment; but in a civil suit, the damages are to be assessed solely by the jury.

The charges laid against the defendant in the declaration are various; but they may be reduced in substance to the following.---That he repeatedly cails the plaintiff a quack, an empyric; charges him with intemperate bleeding, injudiciously administering Mercury in large doses in the yellow-fever; puffing himself off; writing letters and answering them himself, stiling him the Sampson in Medicine; charging him *with murdering his patients and slaying his thousands, and tens of thousands.*

The counts laid in the declaration is full proved by the publications which are certainly libellous. In what manner do the defendant's counsel repel these proofs? Not by justifying the truth of the matters charged against Dr. Rush, *which on the contrary they have repeatedly acknowledged to be false,* but by analyzing the several allegations in the newspapers, and from thence drawing a conclusion that no intentional personal malice appears, which they say is the essence of the offence.---Malice rests in the heart, and is only to be judged of by the words and actions of the party; the words themselves import malice, and in that case the proof lies on the defendant to shew the innocence of his intentions; if he has done that to your satisfaction, you will acquit him; but as this is chiefly founded on the allegation that the attack was meant to be made on Dr. Rush's System, and not on the man; *it unfortunately appears that not the least attempt is made to combat the Doctor's arguments with regard to the system itself,* but the attack is made merely by gross scurrilous abuse of the Doctor himself: Added to this, one of the witnesses proves a declaration made by the defendant, *that if Doctor Rush had not been the Man he should never have meddled with the System.*

Another

Another ground of defence is of a more serious nature as it leads to an important question on our constitution---it is said that the subject of dispute between the plaintiff and defendant was a matter of public concern, as it related to the health and lives of our fellow citizens, and that by the words of our constitution, every man has a right to discuss such subjects in print. The liberty of the press, gentlemen, is a valuable right in every free country, and ought never to be unduly restrained; but when it is perverted to the purposes of private slander, it then becomes a most destructive engine in the hands of unprincipled men; the utmost purity and integrity of heart, is no shield against the shafts and arrows of malice conveyed to the world by printed publications. Verbal slander may be frequently very injurious, but slander writing or print being more generally disseminated and more durable in its effects, is consequently infinitely more pernicious and provoking. Our state constitution of 1790, contains certainly very general words with relation to the right of a citizen to print his thoughts and offer them to the consideration of the public, but it at the same time guard against the generality of the privilege, by expressly declaring, that every person availing himself of the liberty of the press, should be responsible for the abuse of that liberty; thus securing to our citizens the invaluable right of reputation against every malicious invader of it.

Printed publications attacking private character, is considered with great reason by the law as a very atrocious offence, from its evident tendency to the breach of the public peace---if men find they can have no redress in our courts of justice for such injuries, they will naturally take satisfaction in their own way, involving perhaps their friends and families in the contest, and leading evidently to duels, murders, and perhaps to assassinations.

The principal subject of consideration with the jury will be what damages they are to assess. On this subject you are the ALMOST *uncontrollable judges---it is your peculiar province :---The court have indeed the power to order a new trial where damages are excessive; but in cases of torts and injuries of this kind, the law books say the damages must be so outrageously*

outrageously disproportionate to the offence, as at first blush to shock every person who hears of it, before the court will order a new trial.

Every one must know that offences of this kind have for some time past too much abounded in our city; *it seems high time to restrain them---that task is with you, Gentlemen. To suppress so great an evil, it will not only be proper to give compensatory, but exemplary damages; thus stopping the growing progress of this daring crime---at the same time, the damages should not be so enormous as absolutely to ruin the offender.*

I hope no party considerations will ever have place in this court in the adminstration of Justice---and I entreat you, Gentlemen, to banish them, in considering this subject, entirely from your breasts.

Peter Porcupine to Judge Shippen.

SIR,

The Charge, which you gave against me, on the 14th of December last, has given rise to a very interesting question amongst the gentlemen of the robe at New-York; to wit:—which is its prominent characteristick, *stupidity* or *malice?*—This is a question far too knotty for me to presume to decide; but, with all due submission to your honour and the honourable Judge Brakenridge, who sits on your right hand, I think I may venture to throw some light on the subject; and in doing this, I will endeavour to forget your private character, that it may not extort from me language derogatory to my own.

YOU

You say: "By the law and practice *in Eng-*
" *land*, in the the case of libels, the *only task* of
" the Jury is, to judge of the fact of publication,
" and the truth and fair application of the innu-
" endoes: the court, as judges of the law, reserv-
" ing to themselves the sole power of deciding
" whether the paper amounts to a libel or not.
" But, *in this State*, by the special directions of
" our constitution, the Jury possess the power of
" judging both of the law and fact, under the di-
" rection of the court."

Pray, Sir, what are we to call this? Are we to consider it as one of those stale tricks, which have been so long practised for the purpose of making the Pennsylvanians believe, that they enjoy *more liberty* than their *former* fellow-subjects enjoy; or, must we look upon it as intended to flatter the jury, and give them a high opinion of their power? If the former; if your intention were merely to keep the poor sovereign people in good humour with their present rulers, there is not much to be said: self-preservation is the first law of nature. But, if your design were, by puffing up the pride of the jury, to embolden them to gratify your and their private wishes, at the expence of justice; if this were your motive, what do you deserve?

Be your motive, however, what it might; whether the object you had in view were to obtain and secure a good post for yourself, or, to ruin

ruin me; whatever might be your end, your means were most vile; Your statement respecting "*the law and practice in England*" was a shameful *falshood*, and would have been a disgrace to any other Bench than that from which it came.—"Whereas" says the English law, "*doubts* have arisen, whether, on the trial of an indictment or information, for the making or publishing any libel, where an issue or issues are joined, between the King and the defendant, or defendants, on the plea of not guilty pleaded, it be competent to the Jury impannelled to try the same, to give their verdict *upon the whole matter in issue*."—Be it therefore *declared* and enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, That, on every such trial, the Jury sworn to try the issue, may give *a general verdict* of guilty or not guilty *upon the whole matter put in issue* upon such indictment or information; and shall *not* be required or directed, by the court or Judge, before whom such indictment or information shall be tried, to find the defendant or defendants guilty, merely on the proof of the publication by such defendant or defendants of the paper charged to be a libel, and of the sense ascribed to the same in the such indictment or information."—Act Geo. III. C. 60. A. D. 1792.

This act was passed in 1792; but you will observe (if, indeed, you understand the meaning of

of the words), that it is a *declaratory* act; an act made to remove doubts, to explain and to declare what *was then*, and what *always had been*, the law of the land. You will observe too, if you are capable of comprehending the distinction, that this act declares the right of the jury to decide upon *the whole* matter put in issue even upon an *indictment* or *information*, from which you will perceive, that, this right, in civil actions, never was disputed, never was even a matter of *doubt*. So that, it appears, Mr. Shippen, that your boasted Pennsylvanian Constitution has given the people no *new* rights; it appears that the sovereign citizens, whom you help to rule, enjoy, even nominally, no greater liberty of the press than they would still have enjoyed, had they remained the subjects of a king; and, it necessarily follows, that you were wretchedly ignorant of both the statute and common law of England, or that you advanced a wilful and most barefaced *falshood*.

YOUR definition of the law, and your enumeration of the charges laid against me, which are really too stupid to deserve a comment, conclude with asserting, that the declaration charges me with having accused Doctor Rush " with *murder-* " *ing* his patients, and slaying *his* thousands and " tens of thousands."—What could induce you to make this false, this impudent assertion? Neither the word *murder*, nor any of its derivatives, nor any word that is synonimous with it or any one of its derivatives, is to be found in the publications laid in the declaration. The passage, to

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which you evidently allude, is, I trust, fully justified in the 3rd number of the Rush-Light, but, lest that number should have been kept from your sight by the operation of that *free* constitution, which you so consistently boast of, I shall insert it here.—" Doctor Rush, in that emphatical style " which is peculiar to himself, calls mercury the " Sampson of medicine. In his hands, *and in* " *those of his partizans*, it may, indeed, be justly " compared to Sampson; for, I verily *believe*, that " *they* have slain more Americans with it, than " ever Sampson slew of the Philistines. The Is- " realite slew his thousands, but *the Rushites* have " slain *their* tens of thousands."—Now, is this, as you say it is, charging Doctor Rush " with *mur-* " *dering* his patients, and slaying *his* thousands " and tens of thousands?" So shameful a perversion of a man's words, had it been made use of by a *pleader*, in England, would have been severely reproved by the court; what, then, will Englishmen think of a *judge* who could be guilty of it! And what will they, what must they, think of the government, under which such a man is a judge!

CONTINUING in your pleader-like strain, you observe, that the counsel of the defendant do not repel the charges brought against him " by justi- " fying the truth of the publications, but that, " on the contrary, they have *repeatedly acknow-* " *ledged those publications to be false.*"—It is true, indeed, that my counsel, to their shame be it spoken, did not justify the truth of the publications laid

laid in the declaration; but, that they *might* have justified, every man in America knows well, and you knew, that they *would* have done it, had their client not been an Englishman, and had they not, like you, been in fear of M'c Kean and of your brother slaves who filled your *tribunes* and crouded round your bench. *

In your zeal for the plaintiff you did, however, go too far; for my *counsel*, tame and submissive as they were, did not "repeatedly acknowledge "the publications to be *false*." Neither Mr. Tilghman, nor Mr. Rawle, did, in any one instance, make such an acknowledgment. Nor was even the trimming, mob-courting Harper guilty of baseness and treachery to the extent that you have imputed to him. He did, indeed, say, more than once, that he "*believed*" the publications were "*very untrue*;" but he made no *unqualified* acknowledgment of their being *false*. He went far enough, in all conscience, against a cause, which he was well paid to support: his conduct wanted no colouring: you might, therefore, have spared the daubings of your awkward brush.

"It

* The few faint attempts that were made, by Messrs. Tilghman and Rawle, to repel the abominable aspersions, which were cast on my character and conduct, were replied to by hissing and cursing from the sovereign people in the gallery and in the area of the court-house. Nor did this most scandalous behaviour receive any reproof from the court.

" It appears," say you, " that *not the least at-*
" *tempt* is made [in the publications against Rush]
" to combat the Doctor's arguments, with regard
" to the *system itself.*" If you had been candid, if you had remembered your oath, you would have observed further, that the publications for which I was sued, made only *a part* of those which appeared against Rush and his system of depletion; you would, therefore, have said nothing on this head, unless you had found, upon an examination of Porcupine's Gazette, from which the pretended libels were extracted, that I had never accompanied these pretended libels with serious arguments against the wild and destructive opinions and practice of the plaintiff. " But," say you, " add-
" ded to this, one of the witnesses *proves* a de-
" claration made by the defendant, that *if Doctor*
" *Rush had not been the man, he should never have*
" *meddled with the system.*"—Atrocious falshood! —The words of the witness, Doctor Coxe, as reported in the account of the trial, are these:—
" He [the defendant] replied, that he did not *be-*
" *lieve* he should ever have said *so much* on bleed-
" ing and mercurials, if Doctor Rush had not
" been the author of it."—Was this declaring, *that if Doctor Rush had not been the man, I*
" *NEVER should have MEDDLED with the*
" *system!*" When you summed up this evidence, were you thinking of the office you filled, or of that which you were in hopes of filling? Were you afraid of being out-stripped in the honourable course by either of your worthy compeers? It must be confessed, that such a fear was not unreasonable;

reasonable; for, so well are you matched, that, had you started together, it is a moot point with me, which of the three would have won the prize.

But, a misconstruction of the publications, and a perversion of the evidence, did not satisfy you: you seem to have been still afraid, that, in spite of such cheering encouragement, the jury might have some scruples; and, therefore, you took care to conclude with giving them an assurance, that, provided they laid on damages enough, their verdict should be approved of by you.—"The principle subject of consideration, with the "Jury, will be," say you, "*what damages* they "are to assess." You then proceed to tell them that they are "the *almost* uncontroulable judges "on this subject," and that, "though the court "has it in its power to order a new trial, in case "of excessive damages; yet, that, in cases of "torts and injuries of *this kind*, the *law books* say "the damages must be so *outrageously* disproportionate to the offence, as, at *first blush*, *to* SHOCK "*every person who hears of it*, before the court "will order a new trial!!!"

Bravo! Vivat Respublica! Huzza for "our *glorious* revolution!" Huzza for the sovereign people! Vive la liberté!—But, in the midst of all this rejoicing, I had almost forgot to ask you, *what* "*law books*" you found this maxim in. In those of Robespierre and Fouquier Tinville, I suppose? or, perchance in those of Pennsylvania, or of Algiers? Find it where you will, however, you have applied

applied it, and you and your country are entitled to all the honour it confers. I would give a thousand dollars, if Old Price were yet alive, to have an opportunity of sticking this Charge of yours in one of the curls of his wig.—Here, you wayward and discontented Britons, who are hankering after republicanism; look here! Here you see a complete specimen of the blessings of *liberty* and *reform!* Were one of your judges to declare, that, in order to induce him to grant a new trial, the punishment, for calling a man a quack, must be so outrageously cruel as, at *first blush*, to SHOCK *every person who hears of it*, you would stone him to death; you would shun his touch, as you would the touch of a hang-man; but, were you in Pennsylvania only for one month, were you once "ameliorated" in the philanthropick city of Philadelphia, were you sovereign citizens instead of subjects, you would listen to him as patiently and submissively as a penitent does to his father confessor!

BEGGING your *Honour's* pardon for this digression, I return to you and your jury.—Having promised them, that there should be no check upon their rapacity, you dismiss them with putting into their mouths a pretext for their conduct. "Every "one," say you, "must know, that offences of "this kind have, *for some time past*, too much "abounded in our city: it seems high time to re- "strain them—*that task is with you gentlemen.* "To suppress so great an evil, it will not only be "proper to give *compensatory*, but *exemplary* da- "mages;

" mages; thus stopping the growing progress of " this daring crime—at the same time the dama- " ges should not be so enormous as *absolutely* to " ruin the offender."

THE doctrine of *exemplary* damages is new, and it certainly is as efficacious an instrument of oppression as ever was devised. The very word *damages* excludes every idea of *punishment*. It implies *compensation* for *injuries;* and no jury can, without being foresworn, give a farthing more than what they believe to be *the amount of the injury;* for, if *example* be the object of prosecution, the process ought to be by indictment, or information.

IT has sometimes happened, that actions, similar to that of Rush, have been brought by noblemen and gentlemen, in England, who have preferred the civil to the criminal process, merely to challenge an investigation; because the former allows the defendant to justify the truth of his words, which the latter does not. The damages, if any are given, in such a case, must be given for the sake of *example;* for, it rarely happens that the slander is productive of any real injury to the plaintiff. Such were the actions brought by Lord Sandwich, in 1773, and by the Right Hon. William Pitt, in 1786; in both which cases damages were given, though it was next to impossible that the plaintiffs could have sustained any injury. But, Mr. Shippen, there is some little difference between these noblemen and a boasting inventor

inventor of purging powders. Neither Lord Sandwich nor Mr. Pitt could receive a *compensation*; yet, as they were charged with malversation in office, a civil process was necessary to clear up their characters; and, as neither fine nor imprisonment could take place upon such an action, damages were given for the sake of *example*. But, in the case of a bleeder, or powder doctor, all the jury had to do, if they found the publications false and malicious; was, to ascertain, to the best of their judgements, the amount of the real injury the fellow had sustained, and to assess, as damages, a sum just to that amount, and no more.

But whatever may have been the custom, in England, respecting the legality of assessing exemplary damages, it is most certain that, as to the *sum* to be assessed, no judge ever attempted, no judge ever dared attempt, to dictate to the jury. The following extract, from a charge of Lord Mansfield, shows how careful he was not to encroach on the exclusive province of the jury to estimate damages —"I will not say a word to you about "the damages. I am sure no observations, on "any side, can occur, which you are not capable "of making yourselves. You will take the paper "out with you, and will consider all the circum-"stances of the case, of a publick or private na-"ture."—This charge was delivered in an action of *scandalum magnatum* (defamation of a nobleman) brought by Lord Sandwich against the printer of the London Evening Post, for the publication of a piece signed Alfred, on the 2d of Feb.

Feb. 1773, in which his Lordship, then first Lord of the Admiralty, was falsly accused of having exposed to sale the office of Commissioner of the Navy for the sum of £.2,000. And this instance of Lord Mansfield's forbearance is the more applicable, and forcible, as he was always charged (though I believe very unjustly) with bending the law to favour the Ministerial side of the question, and to extend the power of the judges as far as possible. If he could have found any precedent, or have invented any plausible motive, for encroaching on this undoubted province of the jury, he would not, it is to be presumed, have scrupled to use it on such an occasion.

ANOTHER, and still more striking, contrast to your charge is to be found in that of Lord Mansfield's, delivered in the action of Mr. Pitt against the printers of the General Advertiser and the Morning Herald, who accused him, he being at the time Chancellor of the Exchecquer, *of gambling in the stocks with the money of the nation.* Lord Mansfield closed his charge thus: "The "assessing of the damages is *entirely* in your pro- "vince. *I shall not say a word upon it.* You will "consider them under all the circumstances of the "case, the malignity and the extent, and, for the "sake of example, you will give those damages "*you think proper.*" *

THIS

* The damages given for *falsly* accusing Mr. Pitt of this heinous offence was 250l.---British printers, bless your kind stars!!

THIS is the language of an *English* judge. How different is it from yours! Lord Mansfield tells the jury, that, to estimate the damages is *entirely* in their province; that he shall *not say a word upon it.* You tell your sovereign men, that they are, indeed, the *almost* uncontroulable judges of damages, and you promise them, that, their verdict shall not be set aside, unless it be so outrageously cruel as, at first blush, to *shock* every person who hears of it! The libel on Mr. Pitt was a most atrocious one, yet Lord Mansfield forbears to suggest the propriety of great damages, and tells the jury to give what they think proper, for *the sake of example only*, but you call for damages *both compensatory and exemplary;* you urge them to bring upon the head of the defendant the consequences of both a civil and a criminal prosecution! You do, indeed, observe to them, that "the damages must not be so enormous as *abso-* "*lutely* to *ruin* the offender." This was a wholesome caution: it was telling them how far they might go, without endangering the success of the scheme: it was saying to them; 'ruin him in effect 'but take care to do it in such a way as will not 'defeat our intention. Bilk him, embarrass him, 'break up his business, and plunge him into debt; 'but be careful not to let your malice so far over-'shoot the mark, as to leave us no excuse for 'confirming your verdict.'—This was pretty language from a court to a jury! The jury followed your directions with great exactness, and the malignant slaves thought they had given me a deadly

a deadly blow; but, that blow, while it has had no effect on me, has recoiled with redoubled force on themselves, their accomplices, and their city.

But, your pretext for recommending a ruinous verdict, is, if possible, more atrocious than the recommendation itself. "Offences of this kind," say you, "have, *for some time past*, too "much abounded in our city; *it seems high time* "*to restrain them*—that task is with *you*, Gentle-"men."—So; because offences of the same kind *had abounded in the city*, because they had passed unnoticed, because they had been tolerated, and because it seemed high time to restrain them, I was to be all but *absolutely* ruined; I was to suffer for what all others had done, and also for the negligence of courts and juries! Precious justice this!

Yes; offences, not of "*this kind*," but of a much worse kind, had, indeed, for a long time abounded in your city. Libels the most false, scandalous, and malicious; publications the most obscene, and most impious, had long, abounded, and do still abound; and had I shared in these publications, not a farthing damages would ever have been given against me. But, I was a British subject, I had defended the character of my king and country against the infamous calumnies that you and your associates suffered to be propagated; I had exposed the little despots of Pennsylvania; I had contrasted their character with that of the king, against whom they were continually endeavouring to revive the animosity of the people; and

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it was for this, and this alone, that you and your associates hated me. At the very moment when you gave this scandalous charge, when you called aloud for ruin on my head, you were perfectly convinced, that I had rendered America essential services; you knew, that my character was unblemished, and that my conduct, as a publisher, was singularly laudable; you knew that I never wilfully published a *falshood;* you knew that, as a book-seller, I never gave circulation to a seditious, an irreligious, or an immoral publication, but that, on the contrary, I had constantly endeavoured to obstruct the progress of such works, and that I had been the patron of every effort to counteract their deleterious effects. All this you knew, and with all this in your mind, you uttered the malignant Charge, which I this day rescue from that oblivion, to which its stupidity had condemned it.

One fact only remains to be narrated, and a most valuable one it is. I beg every New-Yorker and every Englishman to pay good attention to it, and to bless God for not having placed them under the jurisdiction of a Pennsylvanian Judge.

The trial was begun on the 13th, and the 5,000 dollar Verdict was given on the 14th, of December. It is well known, that, after every verdict, *four days* are allowed, previous to entering up the judgment, in order to enable the defendant to prepare for application for an arrest of judgment. On the 17th, therefore, my counsellor, Mr. Edward Tilghman, made a motion for a rule

rule to shew cause why the verdict and judgment should not be set aside for excessiveness of damages, which motion was rejected by you and your associates. Well might you reject it! for, on the 16th, the *day before* you refused the new trial, I was *actually arrested*, for the 5,000 dollars, at New York! so that, it appears, that the plaintiff and his counsel were *sure*, quite *sure*, that a new trial wuold not be granted, two days, at least, *before* that new trial was moved for!—Vivat Respublica! Huzza for liberty and revolution!

'AND what do I care for all this,' say you. 'I have got the post of Chief Justice, and shall 'hold it; and, in spite of all the exposures you 'can make, I shall still have the huzzars of the 'base herd of Philadelphians.'*—That is true enough: I have not encountered the hopeless task of making any impression on you, or on the wretched beings, by whom you are surrounded; but I know *where* I shall produce an impression, and

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* WHEN Shippen closed his Charge, there was a *clapping of hands*, amongst the people, who filled the galleries and the area of the court-house, and when the verdict was pronounced, the joy, of the malignant wretches broke out into *loud and repeated acclamations!* Nor was this joy confined to the herd of spectators; the shouting in the court-house was, the next day, recorded by the news-printers, who exulted in this proof of the *zeal* and *justice* of their *fellow citizens!*

and though my labours may be slow in their operation, they will be sure and lasting in their effects.

With this I dismiss you, 'till I have occasion to call you before me again.*

Wm. Cobbett.

The Rush-Light has already made some astonishing exposures respecting the much boasted *liberty of the press*. It has many more to make. The mean arts and the abominable tyranny, employed, in Philadelphia, for the purpose of effecting the suppression of this work, surpass all that ever has been recorded of the detestable court of Star-Chamber. The Government of Pennsylvania appears to me to be approaching very fast towards absolute despotism. If a writer like the author of the Pursuits of Literature, were in that State, he would be ruined, if not assassinated, in less than twelve months. The poor printers and booksellers are reduced to a degree of slavish dread hardly to be conceived; and, to hear the language of the inhabitants in general, one would really imagine, that the bloody laws of Valentinian (on which Mc'Kean lately pronounced an eulogium) were in full force.

Por-

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* There are various other matters respecting the courts in Pennsylvania, which shall be related in future Numbers of this work.

PORCUPINE'S REVENGE.

A Dialogue between Rush and Porcupine.

Rush.---Master Peter, you see, with my twelve sov'reign men,
I have tipp'd you a squeeze for the strokes of your pen.
These twelve sov'reign men, now I no longer need them,
How shall I reward?

Peter.——————Why, *bleed* them, Rush, *bleed them!*

Rush.—But, to the judge on the bench, so just and humane
(The worthy successor and friend of Mack Kean);
To my lawyers who bellow'd so loudly 'gainst you,
To Hopkinson, Ingersol, Levi the Jew,
The half-quaker Lewis (who once was a carter),
And your faithful counsel, the mob-courting Harper;
To my volunteer witnesses, grateful young Mease,
To the poor Doctor Coxe, and poor granny Dewees
(Who gen'rously came, with no duty to urge them),
What return shall I make?

Peter.----------Why *purge* them, Rush, *purge them!*

Enter Grave-Digger.

Gra. Dig.---By my soul, Master Peter I think it too hard,
That with such folks as these I must fill my church-yard.

Peter---Church-yard! honest fellow, my meaning's not such;
For, where a man's buried it matters not much;
And the great Doctor Mitchell (of bleeding renown)
Says, "let all *human carrion* be dragg'd out of town."

A TRA-

A Tragedy Scene.

Enter Sangrado, *with the Rush-Light in his hand. He remains for about half an hour in stupid, sullen silence; and then, starting from his reverie, pours forth, in slow and melancholy accents, the following soliloquy.*

Unthinking Doctor! wherefore did thy rage
Urge thee with printer's prowess to engage!
O, why from puffing to the law retire;
Why for thyself construct the fun'ral fire?
What tho' an Ingersol before thee stood,
With dangling brush, to paint thee fair and good;
A weeping Hopkinson, dear tender creature,
Sobbing, to wail the injuries of nature;
What tho' kind-hearted jurors press'd thee round,
And philanthropic judges too were found;
What tho' the gentle, just and gen'rous crowd
The verdict sanction'd with applauses loud;
What tho' five thousand dollars were the prize,
Which, in idea, gratifi'd thy eyes?
Say! could such lenitives relieve thy shame,
Or re-unite thee to thy shadow, fame?
Could they kill Peter---whose vindictive art
So well directs his venom to thy heart;
Could they prevent exposure, and disgrace,
Or change the tincture of an Ethiope's face?
Oh, no! they bade these hellish fires arise,
And bound the to the stake!---*(he dies.)*

A Portrait of a Governor,

Drawn by one of his Slaves.

Before I exhibit this picture, I shall trouble the reader with a few explanatory remarks.—M'c Kean, from under whose government I thought it prudent to retire in December last, had no sooner seized fast hold of the reins of power, than he began to lash, with a merciless hand, every man, who had dared to oppose his election, and who happened to be placed within his immediate reach. The civil offices, in Pennsylvania, such, for instance as that of Register, Clerk of Court, Prothonotor, &c. &c. are very numerous, and are all held during the pleasure of the governor, who appoints and displaces without controul or advice. The greatest part of these offices were filled by men, who had rendered themselves more or less conspicuous during the late revolution; and who, being once on horse-back, found riding much pleasanter than walking, through this vale of tears, and had, therefore, no inclination to dismount. They had all been appointed by Mifflin, who, though not destitute of malice, was a mere sot, capable of being soothed by the most stupid attempts at adulation. Most of these civil officers had served in a military capacity under him, and he felt that partiality towards them, which old comrades generally feel towards each other. When, therefore, a successor to their patron was to be chosen, they saw themselves in jeopardy. Two candidates offered, *Ross* and *M'c Kean*. In the latter they remembered, indeed, an old revolutionist; but they also remembered, that he was

not a Mifflin. Keen, vigilent, persevering, tyrannical and vindictive as they knew M'c Kean to be, they were afraid to give him their support, lest they should have him for a master, and afraid to oppose him, lest they should be displaced. Being, however, at last, fully persuaded that Ross would succeed, they openly gave him their support. They were egregiously deceived: M'c Kean was elected by a vast majority, and, though his great age was one of the objections they affected to have against him, he soon made them feel that he was not deficient in point of energy.

The first step he took was to annul all the commissions, during pleasure, granted by his predecessor. He had previously obtained exact information respecting the electioneering conduct of every one of the civil officers, whom he had the power to displace, and according to this he made out his list of proscription. He swept the poor fellows off by dozens, with as little ceremony as a foul-feeding glutton brushes the flies from the meat, which he is himself going to devour.

Many of these ousted patriots; all of them, indeed, who could write (and some of them who could not), began a most lamentable out-cry against him. The news-papers were, and still are, inundated with their doleful addresses to the compassion of the people. Being, as they imagined, snugly quartered, on the public for life, they had entirely forgotten the favourite maxim of republicanism;—a *rotation in office!*

Amongst all these pitiful complainants, not one

one has come before the publick with a worse grace than the writer of the following letter. He married one of Mifflin's daughters, and, with her, he married two offices, those of Clerk of the Mayor's and Orphan's courts, of the City and County of Philadelphia; but, Mc'Kean, not willing, I suppose, to tolerate polygamy, in his dominions, has divorced him from two thirds of his spouses.

To GOVERNOR M'KEAN.

Philadelphia, March 17th, 1800.

At length my case is decided; and I have received from your excellency my dismission from office, in direct and palpable violation of your promise made *(not to me, for I have no favours to ask of you)* but to the late Governor Mifflin, which, although he is no more, can be ascertained by proof you dare not contradict. It is indeed a matter of no surprise, that the little regard you may have left for your character and veracity in transactions of this kind, has yielded, after a short struggle, to the burning impulse of party rage and personal vengeance;—Yet, if there were not many and irresistable evidences of your total disregard for every manly and just sentiment when it comes in collission with your paltry and vindictive passions, I should suppose you have not, without some difficulty, made up your mind to my removal, and that now and then a consciousness of perfidy would stagger your resolution and make you sensible of shame.—Let me repeat that I pretend to no claims upon your personal or political regard —I made no requests and received no promises;---*I had a right to none,* and I place this among the honourable circumstances of my dismission:---But to the late Governor you did make such promises; they are known to many, and your Secretary, before the death of Mr. Mifflin, explicitly declared ---not surely from his own authority --that *I would be continued in my appointments.* As a further proof that my removal was not at first intended, I received no circular letter, as those gentlemen did who were originally proscribed---Whether the mean and guilty terror, looking to another election, and trembling before a supposed dangerous competitor, which induced you to make a promise so repugnant to your inclination, or the contemptible perfidy with which you have broken that promise,

promise, be the most debasing, is a question you may discuss at your leisure; but when death had removed the danger which was the basis of your engagement, I was satisfied you would not suffer yourself to be shackled with the obligation. ---Mine is not the only instance in which you have pursued this disgraceful course of trimming duplicity. I am acquainted with other cases in which the same sort of low degrading policy and insincerity have been used by you, which in due time will be exposed to the public eye.

When I looked through my native state, and beheld the victims that were falling on every side; when I saw you scouring over the land like an avenging fury; when I discovered that long, laborious and faithful services in that revolutionary war about which you prate so much; that unexceptionable official conduct, and the most amiable private character; that no course of prudence and moderation at the late election; that nothing, in fact, but an active membership in your party, could save.---When you declared to a gentleman, "you are an unexceptionable character and an excellent officer, *but you voted against me*;"---When old age burthened with large and expensive families, was treated with scorn and consigned with insult to misery and want, nay when the very tears that glistened in the eyes of the distressed seemed but to brighten your savage triumph, what had I to expect?---An open and avowed opponent to your election, who had requested no friend to solicit, no foe to forbear---well knowing, that solicitation while it pampers the base pride of a groveling and vindictive mind, never disposes it to justice or moderation---When such men as Arndt, Gibbons, Linton, Read, Bowers, Barnitz and Lions, whose "white flakes challenge pity," and who have wasted their youth in the service of their country, are struck with your iron rod of power, in what could I *personally* hope for an exemption? Do you tell me that *Barnitz* and *Lions* have been re-appointed? but you will not say they were not marked as devoted victims, and were not accordingly complimented with your civil circulars, in which, with a ludicrous and canting hypocrisy, you affect to be sorry at the arrangements, *made by yourself*, which render their removal and destruction necessary---you did not pursue the blow it is true; but why? Did conscience recall the deed and a sense of justice restrain you? No---or you could never have intended their ruin---But the people of their respective counties became outrageous at your unexampled barbarity, crushing the crippled soldier and the aged patriot; your popularity

ty was threatened, and your coward heart shrunk from the foul mischief your soul delighted in—Insufferably insolent and overbearing in the ebullitions of your temper, you sink mean, dejected and degraded at the prospect of just retribution. Such was your character as Chief justice on the bench, and it adheres to the Governor. As to the exercise of your power on me, there is nothing remarkable in it as it relates merely to myself; and is worthy of remark only as it exposes the rottenness of your faith.---There are many grounds on which I might with certainty have looked for this proceeding from you—The rage of an old family quarrel (in which I had no part) may have in a measure subsided; but the embers have been burning on your heart, and wanted but opportunity to blow them into a destroying flame. Any man acquainted with your temper and dispositions, will not hesitate to believe; that you can scarcely receive a more welcome gratification than to inflict an injury on the son of FRANCIS HOPKINSON. Whether this was the prevailing impulse in your conduct, or whether some mercenary dependant claims the promised price of his prostituted services (for you will recollect you speak of your "*arrangements*" on the very day after you came into office) I will not more minutely enquire; As the motives are equally unworthy, your claim to either or both of them will not be doubted. But another reason remains—*I opposed you at the* late election—Yes, thank God! and in a most open, decisive and undisguised manner. My efforts, such as they were, were exerted against you to their extent, and in favour of a man infinitely above you in the qualifications of his heart and understanding and in the respectability of his character and conduct; And I had a full and unimpeachable right to do so; and while I did it with truth and propriety, you had no right to complain. As to the manner of my opposition, I defy the industry of your Excellency which has been so fortunate in collecting affidavits and certificates, true and untrue, from all quarters of the state, of the deeds, words and thoughts of your enemies!—I defy all those wretched minions who, crawling at your feet while they despise you in their souls, bloat your pride with disgusting flattery, until your poor, weak brain reels, enflame your passions with paltry anecdotes, and corrupt your heart with falsehood and hypocrisy--to produce a single paragraph of my writing, a single word of my utterance, that is not the utmost, true in its *matter*, and justifiable in its *manner*. I do not mean to stand accountable for every thing that your *affidavit men* may lay to my charge; God forbid I should be tried by their veracity, but what I

have

have written, said or done, I will acknowledge and defend. My opposition was honest, conscientious and constitutional, and I would not recall the smallest portion for all you can give or all you can take away.

I HAVE been informed that once in the fury of a savage temper or in the heat of inebriety (for the most regular men are sometimes thrown off their balance) you boastingly declared of an officer you were about to displace for the unpardonable sin of voting against you *"that you would teach his wife and children how to starve!"* Such probably are your charitable intentions towards me. But in these I trust you will be disappointed. Although the offices I have holden have necessarily abstracted me in a great degree from the regular pursuits of my profession, which I shall exert myself to regain, yet I cannot doubt, that perseverance and industry will make the loss you have inflicted but temporary, and disappoint the murderous malignity that dictated your conduct: When such dull animals as *Thomas M'Kean*, without the smallest pretension to genius, manners or general information, become Governors, nobody should despair of preferment.

WHILE you are exercising, with merciless rage, the odious power of a tyrant, while you are gratifying passions the most diabolical, and resentments the most mean, you can scarcely be so lost in the sublime contemplation of your own importance as to hope that the victims you prostrate will retort no reproaches to your teeth, or bury in silence the injuries you inflict. Do you suppose that every blow you strike breaks the spirit of the man, extinguishing even the desire of retaliation? Or do yon feel yourself so firmly exalted on your tottering stool of authority as to despise the just reward of your deeds? Your elevation commands neither respect nor fear from me, and the use you are making of it is sinking you even with your friends. I have never approached you with humility, and I do not now adress you to complain. That immoveable hatred and contempt with which a free mind scorns a tyrant, in all his shapes and in all his acts, are the only feelings that inspire me in your presence. In all this display of the strength of office, I know you are a poor, self-convicted, wretched being. You lie down covered with curses, and the hours of a single day do not pass round without whipping you with the stings of scorpions, making you feel what sort of *thing* you are. Thus the very indulgence of your wishes becomes the bane of your happiness.

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ONE consideration only has made me hesitate in thus exposing your shameful insincerity to the world, and giving expression to my feelings. I mean the good understanding and friendly intercourse that, putting political differences aside, has subsisted between the branches of our respective families, which promised to bury the feuds of former days, and restore that harmony which should ever be found among the descendants of common ancestors. But I address you on a personal question between you and me, in which your children are in no shape implicated; and I trust they can scarcely be so unreasonable as to expect I am to be wounded without feeling, or to feel without resenting.

You may perhaps discover harshness of language in this letter, but to have accomodated myself to the favourite stile of your Excellency, I should have indulged much more deeply in invective and abuse---A man who ventures to brand nearly one half, and surely the most respectable part, of the people of Pennsylvania with such names as Traitors, Tories, *Refugees, &c. thus charging them with positive and high crimes, has little reason to look for much studied politeness of expression from those he has so grossly and indecently insulted. Your claims on this score from me will appear still more unfounded when you reflect on the evening in which, in the presence of one of my friends, you amused yourself with calling me scoundrel, puppy, rascal, with similar epithets of genteel disapprobation!

I UNDERSTAND J. Beckly is not intended as the permanent proprietor of my offices; but that he is to hold them for a year, when they will be delivered over to a person who will then be qualified to receive.---This is a sort of juggling by which your Excellency may reward a great many friends with a few offices. How much the chance of this *Contingent Remainder-man* is worth, time will decide; but if Æsop's frog or any other poor creature, ever bursted with pride, your Excellency will certainly make an explosion before the year runs out.....For the present I leave you, but with this assurance, that you and I do not part here.

JOS. HOPKINSON.

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* If M'c. K. did call the "*most respectable*" part of the people *Tories*, he was above half right.—P. P.

Now, reader, remember, that this Hopkinson is the very man who accused *me* of abusing the *great men* of Pennsylvania, and who besought the malicious jury to make me "*a blighted picture of infamy and ruin,*" for calling Rush a quack!—How just, how singularly fit, is the punishment which my enemies are inflicting on each other! Mc'Kean was my great persecutor, he was at the bottom of all the mischief, and he is now attacked and exposed, by one of the very tools that were employed to effect his nefarious purposes; and the wretched Hopkinson, who exulted in the hope of seeing me "a blighted picture of infamy and ruin," has *himself* been made to exhibit that picture, and by the hand of that same tyrant, to whom, in persecuting me, he was paying his court.—Mc'Kean has published an answer to Hopkinson, and has produced a letter, in which the latter does actually *solicit a continuance in office*.—Base wretches!

JOHN MORGAN,
No. 3, South Front Street, Philadelphia,

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* If my friend Morgan has any Elastic Spring Trusses for the *mind*, as well as for the body, I beseech him to make a present of one of them to Doctor Rush. If he has a couple to spare, it may not be amiss to give one to Joseph Hopkinson, *Esq.*

[END OF NO. IV.—APRIL 14, 1800.]